

**BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation

Against:

File No. 1B-2008-189509

WESLEY MASARU KOBAYASHI, D.P.M.

Doctor of Podiatric Medicine

License No. E 3324

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on April 5, 2010.

DATED March 3, 2010

BOARD OF PODIATRIC MEDICINE



Karen L. Wrubel, D.P.M., President

1 EDMUND G. BROWN JR.
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 JUDITH T. ALVARADO
Deputy Attorney General
4 State Bar No. 155307
300 South Spring Street, Suite 1702
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Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF PODIATRIC MEDICINE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 WESLEY MASARU KOBAYASHI, D.P.M.
18800 Main Street, Suite 104
Huntington Beach, California 92648

13 Doctor of Podiatric Medicine License
14 No. E3324,

15
16 Respondent.

Case No.: 1B-08-189509

OAH No.: 2009090830

13 **STIPULATED SETTLEMENT AND**
14 **DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. James Rathlesberger (Complainant) is the Executive Officer of the Board of Podiatric
22 Medicine. He brought this action solely in his official capacity and is represented in this matter
23 by Edmund G. Brown Jr., Attorney General of the State of California, by Judith T. Alvarado,
24 Deputy Attorney General.

25 2. WESLEY MASARU KOBAYASHI, D.P.M. (Respondent) is represented in this
26 proceeding by attorney C. Keith Greer, whose address is 16787 Bernardo Center Drive, Suite 14,
27 San Diego, California 92128.

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1 3. On or about July 1, 1985, the Board of Podiatric Medicine (Board) issued Doctor of
2 Podiatric Medicine License No. E3324 to Wesley Masaru Kobayashi, D.P.M. The license was in
3 full force and effect at all times relevant to the charges brought in Accusation No. 1B-08-189509
4 and will expire on January 31, 2011, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 1B-08-189509 was filed before the Board of Podiatric Medicine
7 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
8 Accusation and all other statutorily required documents were properly served on Respondent on
9 September 3, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A
10 copy of Accusation No. 1B-08-189509 is attached as Exhibit "A" and incorporated herein by
11 reference.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 1B-08-189509. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

26 **CULPABILITY**

27 8. Respondent admits the truth of each and every charge and allegation in Accusation
28 No. 1B-08-189509.

1 9. Respondent agrees that his Doctor of Podiatric Medicine License No. E3324 is
2 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
3 in the Disciplinary Order below.

4 **RESERVATION**

5 10. The admissions made by Respondent herein are only for the purposes of this
6 proceeding, or any other proceedings in which the Board or other professional licensing agency is
7 involved, and shall not be admissible in any other criminal or civil proceeding.

8 **CONTINGENCY**

9 11. This stipulation shall be subject to approval by the Board of Podiatric Medicine.
10 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
11 Podiatric Medicine may communicate directly with the Board regarding this stipulation and
12 settlement, without notice to or participation by Respondent or his counsel. By signing the
13 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
15 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
17 action between the parties, and the Board shall not be disqualified from further action by having
18 considered this matter.

19 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
20 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
21 effect as the originals.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following
24 Disciplinary Order:

25 **DISCIPLINARY ORDER**

26 **IT IS HEREBY ORDERED** that Doctor of Podiatric Medicine License No. E3324 issued
27 to Respondent Wesley Masaru Kobayashi, D.P.M. is revoked. However, the revocation is stayed
28

1 and Respondent is placed on probation for thirty-five months on the following terms and
2 conditions.

3 1. **CLINICAL TRAINING PROGRAM** Within 60 calendar days of the effective
4 date of this Decision, Respondent shall enroll in a clinical training or educational program
5 equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the
6 University of California - San Diego School of Medicine ("Program").

7 The Program shall consist of a Comprehensive Assessment program comprised of a two-
8 day assessment of Respondent's physical and mental health; basic clinical and communication
9 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to
10 Respondent's specialty or sub-specialty; and at minimum, a 40 hour program of clinical education
11 in the area of practice in which Respondent was alleged to be deficient and which takes into
12 account data obtained from the assessment, Decision, Accusation, and any other information that
13 the Board or its designee deems relevant. Respondent shall pay all expenses associated with the
14 clinical training program.

15 Based on Respondent's performance and test results in the assessment and clinical
16 education, the Program will advise the Board or its designee of its recommendation(s) for the
17 scope and length of any additional educational or clinical training, treatment for any medical
18 condition, treatment for any psychological condition, or anything else affecting Respondent's
19 practice of podiatric medicine. Respondent shall comply with Program recommendations.

20 At the completion of any additional educational or clinical training, Respondent shall
21 submit to and pass an examination. The Program's determination whether or not Respondent
22 passed the examination or successfully completed the Program shall be binding.

23 Respondent shall complete the Program not later than six months after Respondent's initial
24 enrollment unless the Board or its designee agrees in writing to a later time for completion.

25 Failure to participate in and complete successfully all phases of the clinical training
26 program outlined above is a violation of probation.

27 If Respondent fails to complete the clinical training program within the designated time
28 period, Respondent shall cease the practice of medicine within 72 hours after being notified by

1 the Board or its designee that Respondent failed to complete the clinical training program.

2 2. **PRESCRIBING PRACTICES COURSE** Within 60 days of the effective date of
3 this Decision, Respondent shall enroll in a course in prescribing practices, at Respondent's
4 expense, approved in advance by the Board or its designee. Failure to successfully complete the
5 course during the first 6 months of probation is a violation of probation.

6 A prescribing practices course taken after the acts that gave rise to the charges in the
7 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
8 or its designee, be accepted towards the fulfillment of this condition if the course would have
9 been approved by the Board or its designee had the course been taken after the effective date of
10 this Decision.

11 Respondent shall submit a certification of successful completion to the Board or its
12 designee not later than 15 calendar days after successfully completing the course, or not later than
13 15 calendar days after the effective date of the Decision, whichever is later.

14 3. **NOTIFICATION** Prior to engaging in the practice of medicine, the Respondent
15 shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief
16 Executive Officer at every hospital where privileges or membership are extended to Respondent,
17 at any other facility where Respondent engages in the practice of podiatric medicine, including all
18 physician and locum tenens registries or other similar agencies, and to the Chief Executive
19 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.
20 Respondent shall submit proof of compliance to the Division or its designee within 15 calendar
21 days.

22 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

23 4. **PHYSICIAN ASSISTANTS** Prior to receiving assistance from a physician
24 assistant, Respondent must notify the supervising physician of the terms and conditions of his/her
25 probation.

26 5. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws, all rules
27 governing the practice of podiatric medicine in California and remain in full compliance with any
28 court ordered criminal probation, payments, and other orders.

1 6. **QUARTERLY DECLARATIONS** Respondent shall submit quarterly declarations
2 under penalty of perjury on forms provided by the Board, stating whether there has been
3 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
4 not later than 10 calendar days after the end of the preceding quarter.

5 7. **PROBATION COMPLIANCE UNIT** Respondent shall comply with the Board's
6 probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business
7 and residence addresses. Changes of such addresses shall be immediately communicated in
8 writing to the Board or its designee. Under no circumstances shall a post office box serve as an
9 address of record, except as allowed by Business and Professions Code section 2021(b).

10 Respondent shall not engage in the practice of podiatric medicine in Respondent's place of
11 residence. Respondent shall maintain a current and renewed California doctor of podiatric
12 medicine's license.

13 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
14 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30
15 calendar days.

16 8. **INTERVIEW WITH THE BOARD OR ITS DESIGNEE** Respondent shall be
17 available in person for interviews either at Respondent's place of business or at the probation unit
18 office with the Board or its designee, upon request, at various intervals and either with or without
19 notice throughout the term of probation.

20 9. **RESIDING OR PRACTICING OUT-OF-STATE** In the event Respondent
21 should leave the State of California to reside or to practice, Respondent shall notify the Board or
22 its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is
23 defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in
24 any activities defined in section 2472 of the Business and Professions Code.

25 All time spent in an intensive training program outside the State of California which has
26 been approved by the Board or its designee shall be considered as time spent in the practice of
27 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
28 period of non-practice. Periods of temporary or permanent residence or practice outside

1 California will not apply to the reduction of the probationary term. Periods of temporary or
2 permanent residence or practice outside California will relieve Respondent of the responsibility to
3 comply with the probationary terms and conditions, with the exception of this condition, and the
4 following terms and conditions of probation: Obey All Law; Probation Unit Compliance; and
5 Cost Recovery.

6 Respondent's license shall be automatically cancelled if Respondent's periods of temporary
7 or permanent residence or practice outside California totals two years. However, Respondent's
8 license shall not be cancelled as long as Respondent is residing and practicing podiatric medicine
9 in another state of the United States and is on active probation with the medical licensing
10 authority of that state, in which case the two year period shall begin on the date probation is
11 completed or terminated in that state.

12 **10. FAILURE TO PRACTICE PODIATRIC MEDICINE - CALIFORNIA**

13 **RESIDENT** In the event the Respondent resides in the State of California and for any reason
14 Respondent stops practicing podiatric medicine in California, Respondent shall notify the Board
15 or its designee in writing within 30 calendar days prior to the dates of non-practice and return to
16 practice. Any period of non-practice within California as defined in this condition will not apply
17 to the reduction of the probationary term and does not relieve Respondent of the responsibility to
18 comply with the terms and conditions of probation. Non-practice is defined as any period of time
19 exceeding thirty calendar days in which Respondent is not engaging in any activities defined in
20 section 2472 of the Business and Professions Code.

21 All time spent in an intensive training program which has been approved by the Board or its
22 designee shall be considered time spent in the practice of medicine. For purposes of this
23 condition, non-practice due to a Board-ordered suspension or in compliance with any other
24 condition of probation shall not be considered a period of non-practice.

25 Respondent's license shall be automatically cancelled if Respondent resides in California
26 and for a total of two years, fails to engage in California in any of the activities described in
27 Business and Professions Code section 2472.

28 **11. COMPLETION OF PROBATION** Respondent shall comply with all financial

obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate will be fully restored.

12. **VIOLATION OF PROBATION** If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

13. **COST RECOVERY** Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, Respondent shall reimburse the Board the amount of \$10,430.00 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by Respondent shall not relieve the Respondent of his/her obligation to reimburse the Board for its costs.

14. **LICENSE SURRENDER** Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice podiatric medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a podiatric medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. **PROBATION MONITORING COSTS** Respondent shall pay the costs associated with probation monitoring each and every year of probation as designated by the Board, which

may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation.

16. **NOTICE TO EMPLOYEES** Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which Respondent has been disciplined and the terms and conditions of probation to all employees involved in his/her practice. Within fifteen (15) days of the effective date of this Decision, Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and Decision in the case and understand Respondent's terms and conditions of probation.

17. **CHANGES OF EMPLOYMENT** Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within thirty (30) days of such change.

18. **COMPLIANCE WITH REQUIRED CONTINUING MEDICAL EDUCATION** Respondent shall submit satisfactory proof biennially to the Board of compliance with the requirement to complete fifty hours of approved continuing medical education, and meet continuing competence requirements for re-licensure during each two (2) year renewal period.

ACCEPTANCE

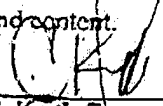
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, C. Keith Greer. I understand the stipulation and the effect it will have on my Doctor of Podiatric Medicine License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Podiatric Medicine.

DATED: 1/11/10

WESLEY MASARU KOBAYASHI, D.P.M.
Respondent

1 I have read and fully discussed with Respondent Wesley Masaru Kobayashi, D.P.M. the
2 terms and conditions and other matters contained in the above Stipulated Settlement and
3 Disciplinary Order. I approve its form and content.

4 DATED: Jan 11, 2010


C. Keith Greer
Attorney for Respondent

7 **ENDORSEMENT**

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Podiatric Medicine of the Department of Consumer
10 Affairs.

11 Dated: 1/11/2010

12 Respectfully Submitted,

13 EDMUND G. BROWN JR.
14 Attorney General of California
15 ROBERT MCKIM BELL
16 Supervising Deputy Attorney General


17 
18 JUDITH T. ALVARADO
19 Deputy Attorney General
20 Attorneys for Complainant
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27
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Exhibit A

Accusation No. 1B-08-189509

1 EDMUND G. BROWN JR.
Attorney General of California
2 JUDITH T. ALVARADO
Deputy Attorney General
3 State Bar No. 155307
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 3, 2009
BY Colleen McNamee ANALYST

8 **BEFORE THE**
9 **BOARD OF PODIATRIC MEDICINE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1B-08-189509

12 WESLEY M. KOBAYASHI, D.P.M.
18800 Main Street, Suite 104
13 Huntington Beach, California 92648

A C C U S A T I O N

14 Doctor of Podiatric Medicine License
No. E3324,

15
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. James Rathlesberger (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer
22 Affairs.

23 2. On or about July 1, 1985, the Board of Podiatric Medicine issued Doctor of Podiatric
24 License Number E3324 to Wesley Masaru Kobayashi, D.P.M. (Respondent). That license was in
25 full force and effect at all times relevant to the charges brought herein and will expire on January
26 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Podiatric Medicine (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2222 of the Code states the California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

5. The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

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1 7. Section 2234 of the Code states:

2 "The Division¹ of Medical Quality shall take action against any licensee
3 who is charged with unprofessional conduct. In addition to other provisions of this
4 article, unprofessional conduct includes, but is not limited to, the following:

5 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
6 abetting the violation of, or conspiring to violate any provision of this chapter
7 [Chapter 5, the Medical Practice Act].

8 (b) Gross negligence.

9 "..."

10 8. Section 2497 of the Code states:

11 "(a) The board may order the denial of an application for, or the
12 suspension of, or the revocation of, or the imposition of probationary conditions
13 upon, a certificate to practice podiatric medicine for any of the causes set forth in
14 Article 12 (commencing with Section 2220) in accordance with Section 2222.

15 "(b) The board may hear all matters, including but not limited to, any
16 contested case or may assign any such matters to an administrative law judge. The
17 proceedings shall be held in accordance with Section 2230. If a contested case is
18 heard by the board itself, the administrative law judge who presided at the hearing
19 shall be present during the board's consideration of the case and shall assist and
20 advise the board.

21 9. Section 2497.5 of the Code states:

22 "(a) The board may request the administrative law judge, under his or her
23 proposed decision in resolution of a disciplinary proceeding before the board, to
24 direct any licensee found guilty of unprofessional conduct to pay to the board a

25
26 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal.
28 Bus. & Prof. Code, §§§§ 2000, et seq.) means the "Medical Board of California," and references to the "Division of
 Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the
 Board.

1 sum not to exceed the actual and reasonable costs of the investigation and
2 prosecution of the case.

3 “(b) The costs to be assessed shall be fixed by the administrative law judge
4 and shall not in any event be increased by the board. When the board does not
5 adopt a proposed decision and remands the case to an administrative law judge, the
6 administrative law judge shall not increase the amount of any costs assessed in the
7 proposed decision.

8 “(c) When the payment directed in the board's order for payment of costs
9 is not made by the licensee, the board may enforce the order for payment by
10 bringing an action in any appropriate court. This right of enforcement shall be in
11 addition to any other rights the board may have as to any licensee directed to pay
12 costs.

13 “(d) In any judicial action for the recovery of costs, proof of the board's
14 decision shall be conclusive proof of the validity of the order of payment and the
15 terms for payment.

16 “(e) (1) Except as provided in paragraph (2), the board shall not renew
17 or reinstate the license of any licensee who has failed to pay all of the costs
18 ordered under this section.

19 “(2) Notwithstanding paragraph (1), the board may, in its
20 discretion, conditionally renew or reinstate for a maximum of one year the license
21 of any licensee who demonstrates financial hardship and who enters into a formal
22 agreement with the board to reimburse the board within one year period for those
23 unpaid costs.

24 “(f) All costs recovered under this section shall be deposited in the
25 Podiatry Fund as a reimbursement in either the fiscal year in which the costs are
26 actually recovered or the previous fiscal year, as the board may direct.

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1 **CAUSE FOR DISCIPLINE**

2 **(Gross Negligence-Patient B.L.²)**

3 10. Respondent is Board Certified by the American Board of Podiatric Surgery. He is in
4 private practice in Orange County. The acts or omissions alleged herein occurred in the scope of
5 Respondent's clinical practice.

6 11. B.L., a 55-year-old female, had been a patient of Respondent since October 2000.
7 Respondent provided treatment to her for various minor complaints.

8 12. After a long absence, B.L. returned to Respondent on or about July 20, 2007, with
9 complaints of pain and tenderness on the right arch and medial right aspect of the right foot and
10 ankle. The patient was initially provided conservative treatment for her complaints. The patient
11 had continued complaints and an MRI of the right foot was performed on August 3, 2007. The
12 results of the MRI were of a partial intrasubstance tear of the posterolateral tibial tendon. B.L. elected
13 to undergo surgical repair of the tendon tear on August 24, 2007.

14 13. The outpatient surgery was scheduled for September 17, 2007, at Fountain Valley
15 Regional Hospital. The plan was for B.L. to recuperate at home. However, just prior to surgery,
16 Respondent learned that B.L. was to be taken to a skilled nursing facility for her post-operative
17 care. Respondent was also asked to prescribe morphine³ for B.L.'s post-operative pain
18 management.

19 14. Respondent wrote post-operative instructions for B.L. on his office letterhead
20 stationary as he did not have staff privileges at the skilled nursing facility where B.L. was to be
21 admitted. Included in his post-operative instructions was a recommendation for morphine 50 mg.
22 and vistaril⁴ 25 mg. to be administered intramuscularly every four hours as needed for pain.

23 15. The tendon repair surgery was uneventful and uncomplicated as was B.L.'s
24 immediate post-operative course. At 10:50 a.m. on September 17, 2007, B.L. was discharged
25

26 ² In this Accusation, the patient is referred to by initial. The patient's full name will be disclosed to
Respondent when discovery is provided pursuant to Government Code section 11507.6.

27 ³ Morphine is an opiate analgesic and Schedule II narcotic.

28 ⁴ Vistaril or Hydroxyzine Hydrochloride is a piperazine-derivative antihistamine. It is used to reduce opiate
analgesic dosage.

1 from the out patient surgery center and taken to St. Edna's Subacute Rehab Center ("St. Edna's")
2 where she was admitted at 12:00 p.m.

3 16. At St. Edna's, a nurse transcribed Respondent's post-operative recommendations on
4 the "Physician Orders" sheet in B.L.'s chart, including the recommendation for morphine 50 mg.
5 and vistaril 25 mg.

6 17. A late chart entry written on September 18, 2007, at 1:00 p.m., states that the nurse
7 obtained a telephone order on September 17, 2007, at 4:30 p.m. from Respondent. The nurse
8 charts that Respondent advised her that it was "okay to give morphine available on hand which is
9 30 mg. morphine with 25 mg. vistaril for now," as the medication as ordered had not been
10 delivered from the outside pharmacy. B.L. was medicated with morphine 30 mg. and vistaril 25
11 mg., intramuscularly.

12 18. At 7:00 p.m. on September 17, 2007, Nurse Tran charts that she obtained
13 "clarification of the morphine/vistaril order." Morphine 30 mg. with vistaril 30 mg.,
14 intramuscularly, was to be given every four hours as needed for pain management.
15 Notwithstanding the order clarification, B.L. was not given any further doses of morphine or
16 vistaril after the 4:30 p.m. dose.

17 19. At approximately 5:00 a.m. on September 18, 2007, B.L. was found unresponsive
18 with an oxygen saturation⁵ level of 84%. B.L. was taken to Garden Grove Hospital emergency
19 department, via ambulance, for an altered level of consciousness.

20 20. Respondent continued to follow B.L. up to January 28, 2008. Her right foot healed
21 and she was ambulating well by January 28, 2008.

22 21. The standard of care requires a podiatrist to prescribe narcotic analgesics within the
23 usual recommended dose. The usual adult intramuscular dosage of morphine is 10 mg., every
24 four hours as necessary to control pain. The dosage of morphine may range from 5 mg. to 20 mg.
25 every four hours as necessary, depending upon patient requirements and response. Here,

26
27 ⁵ Oxygen saturation is an indicator of the percentage of hemoglobin saturated with oxygen at the time of
28 the measurement.

1 Respondent recommended that B.L. be given 50 mg. of morphine with 25 mg. of vistaril, a
2 dosage of morphine that is five times the recommended dose.

3 22. Respondent's treatment of B.L. as set forth above includes the following acts and/or
4 omissions which constitutes an extreme departure from the standard of practice:

5 A. Respondent recommended that B.L. be given 50 mg. of morphine, a dosage of a
6 narcotic analgesia that is five times the recommended dose.

7 23. Respondent's acts and/or omissions as set forth in paragraphs 10 through 21,
8 inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute
9 gross negligence pursuant to section 2234 (b) of the Code. Therefore, cause for discipline exists.

10 **PRAYER**


11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Podiatric Medicine issue a decision:

13 1. Revoking or suspending Doctor of Podiatric Medicine License Number E3324,
14 issued to Wesley Masaru Kobayashi, D.P.M.

15 2. Ordering him to pay the Board of Podiatric Medicine the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 2497.5;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: September 3, 2009

20 
21 JAMES RATHLESBERGER
22 Executive Officer
23 Board of Podiatric Medicine
24 Department of Consumer Affairs
25 State of California
26 Complainant
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